

**ORDINANCE NO. 2453**

AN ORDINANCE OF THE COMMON COUNCIL OF THE TOWN OF GILBERT, ARIZONA, AMENDING THE CODE OF GILBERT, ARIZONA, CHAPTER 10 BUILDINGS AND CONSTRUCTION REGULATIONS, BY ADDING NEW ARTICLE X ENCROACHMENT PERMITS FOR PUBLIC RIGHTS-OF-WAY ESTABLISHING A PROCEDURE TO OBTAIN PERMITS FOR ENCROACHMENTS INTO THE PUBLIC RIGHTS-OF-WAY; PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR PENALTIES.

BE IT ORDAINED by the Common Council of the Town of Gilbert, Arizona, as follows:

Section I. In General.

The Code of Gilbert, Arizona, is hereby amended by amending Chapter 10 Buildings and Construction Regulations, by adding new Article X Encroachment Permits for Public Rights-of-Way, to read as follows (additions in ALL CAPS; deletions in ~~strikeout~~):

**ARTICLE X. ENCROACHMENT PERMITS FOR PUBLIC RIGHTS-OF-WAY**

**SECTION 10-325. DEFINITIONS.**

THE FOLLOWING WORDS, TERMS AND PHRASES, WHEN USED IN THIS ARTICLE, SHALL HAVE THE MEANINGS ASCRIBED TO THEM IN THIS SECTION, EXCEPT WHERE THE CONTEXT CLEARLY INDICATES A DIFFERENT MEANING:

*ENCROACHMENT* MEANS AN OBJECT, STRUCTURE OR OTHER THING IN THE PUBLIC RIGHT-OF-WAY OF THE TOWN. "ENCROACHMENT" DOES NOT INCLUDE (i) CONSTRUCTION, RECONSTRUCTION, REPAIR, ALTERATION, OR GRADING WITHIN THE PUBLIC RIGHTS-OF-WAY, OR (ii) THE USE OF THE PUBLIC RIGHTS-OF-WAY BY VEHICLES, BICYCLES OR OTHER MEANS OF TRANSPORT GOVERNED BY TITLE 28, ARIZONA REVISED STATUTES.

*PUBLIC RIGHT-OF-WAY* MEANS LAND WHICH BY DEED, CONVEYANCE, AGREEMENT, EASEMENT, DEDICATION, USAGE OR PROCESS OF LAW IS RESERVED FOR OR DEDICATED TO THE GENERAL PUBLIC FOR STREET, HIGHWAY, ALLEY, PUBLIC UTILITY, PEDESTRIAN WALKWAY OR LANDSCAPE PURPOSES.

**SECTION 10-326. PERMIT REQUIRED; CONTENTS OF APPLICATION.**

IT SHALL BE UNLAWFUL FOR ANY PERSON TO PLACE AN ENCROACHMENT IN A PUBLIC RIGHT-OF-WAY WITHOUT FIRST OBTAINING A PERMIT FROM THE TOWN ENGINEER AS PROVIDED IN THIS ARTICLE. AN APPLICATION FOR A PERMIT SHALL BE FILED WITH THE TOWN ENGINEER AND SHALL INCLUDE:

- (a) NAME AND ADDRESS OF THE APPLICANT.
- (b) FULLY DIMENSIONED SCALED PLANS SHOWING DETAILS OF THE PROPOSED ENCROACHMENT, INCLUDING LOCATION, DIMENSIONS, UTILITIES, ACCESS POINTS AND HEIGHT.
- (c) SUCH OTHER INFORMATION AS THE TOWN ENGINEER FINDS NECESSARY TO DETERMINE COMPLIANCE WITH TOWN CODES.

**SECTION 10-327. FEES.**

ENCROACHMENT PERMIT FEES SHALL BE ESTABLISHED BY THE COUNCIL BY RESOLUTION AND SHALL BE PAID AT THE TIME OF SUBMITTAL OF THE APPLICATION.

**SECTION 10-328. CONDITIONS OF ENCROACHMENT PERMIT.**

ALL ENCROACHMENT PERMITS SHALL BE ISSUED SUBJECT TO THE FOLLOWING TERMS AND CONDITIONS, WHICH SHALL BE DEEMED INCLUDED ON THE PERMIT:

- (a) THE PERMITTEE SHALL:
  - (1) MAINTAIN THE ENCROACHMENT IN GOOD CONDITION AND IN ACCORDANCE WITH ALL TOWN CODES.

(2) IN THE EVENT OF DAMAGE OR DISTURBANCE TO THE PUBLIC RIGHT-OF-WAY, PROMPTLY, AT ITS OWN EXPENSE AND IN A MANNER ACCEPTABLE TO THE TOWN, RESTORE THE SURFACE OR SUBSURFACE OF THE PUBLIC RIGHT-OF-WAY OR ANY STRUCTURE THEREON IN AS GOOD A CONDITION AS IT EXISTED BEFORE SUCH DAMAGE OR DISTURBANCE. IF SUCH RESTORATION IS NOT COMPLETED WITHIN A REASONABLE TIME, IN THE OPINION OF THE TOWN ENGINEER, OR IF SUCH RESTORATION DOES NOT MEET TOWN STANDARDS, THE TOWN SHALL HAVE THE RIGHT TO PERFORM THE RESTORATION, EITHER THROUGH ITS OWN FORCES, OR THROUGH A CONTRACTOR, AND THE PERMITTEE SHALL REIMBURSE THE TOWN FOR ITS EXPENSE IN SO DOING WITHIN THIRTY DAYS AFTER RECEIPT OF THE INVOICE THEREFOR.

(3) REMOVE THE ENCROACHMENT PRIOR TO THE EXPIRATION OF THE PERMIT OR UPON REVOCATION OF THE PERMIT OR CESSATION OF THE USE. IF THE ENCROACHMENT IS NOT REMOVED, THE TOWN MAY REMOVE THE ENCROACHMENT AND CHARGE THE COST TO THE PERMITTEE, WHO SHALL REIMBURSE THE TOWN FOR ITS EXPENSE IN SO DOING WITHIN THIRTY DAYS AFTER RECEIPT OF THE INVOICE THEREFOR. FINANCIAL ASSURANCE MAY BE REQUIRED BY THE TOWN ENGINEER AS A CONDITION OF THE PERMIT IN AN AMOUNT BASED UPON THE TOWN ENGINEER'S ESTIMATE OF THE FORESEEABLE COST OF REMOVAL BY THE TOWN.

(4) INDEMNIFY AND HOLD HARMLESS THE TOWN, ITS OFFICERS, AGENTS AND EMPLOYEES FROM AND AGAINST ALL DAMAGES OR INJURIES THAT RESULT FROM OR ARE CAUSED BY THE ENCROACHMENT INTO THE PUBLIC RIGHT-OF-WAY. THIS INDEMNIFICATION OBLIGATION IS NOT DIMINISHED BY THE FACT THAT THE TOWN ISSUED AN ENCROACHMENT PERMIT AND SHALL SURVIVE THE TERMINATION OR EXPIRATION OF THE PERMIT. THE INDEMNIFICATION SHALL BE PROVIDED IN A FORM ACCEPTABLE TO THE TOWN.

(5) MAINTAIN INSURANCE COVERAGE IN THE POLICY AMOUNT OF \$1,000,000 FOR EACH OCCURRENCE COMBINED SINGLE LIMIT FOR BODILY INJURY AND PROPERTY DAMAGE LIABILITIES AND \$2,000,000

AGGREGATE. A CERTIFICATE ON INSURANCE NAMING THE TOWN AS AN ADDITIONAL INSURED SHALL BE SUBMITTED TO THE TOWN ENGINEER PRIOR TO ISSUANCE OF THE ENCROACHMENT PERMIT.

(6) COMPLY WITH SUCH OTHER CONDITIONS OF THE PERMIT AS THE TOWN ENGINEER MAY IMPOSE TO PROTECT THE SAFETY OF PERSONS USING THE PUBLIC RIGHT-OF-WAY.

(b) THE ENCROACHMENT PERMIT MAY BE REVOKED BY THE TOWN ENGINEER IF THE PERMITTEE FAILS TO COMPLY WITH THE TERMS AND CONDITIONS OF THE PERMIT.

#### **SECTION 10-329. STANDARDS FOR ISSUANCE OF PERMIT.**

ENCROACHMENTS SHALL COMPLY WITH THE FOLLOWING STANDARDS:

(a) ENCROACHMENTS SHALL BE ISSUED FOR A FIXED PERIOD OF TIME, WHICH MAY BE EXTENDED BY THE TOWN ENGINEER FOR GOOD CAUSE SHOWN.

(b) ENCROACHMENTS SHALL NOT INTERFERE WITH THE VEHICULAR USE OF THE PUBLIC RIGHT-OF-WAY.

(c) ENCROACHMENTS SHALL NOT BE PERMITTED OR MAINTAINED IN A MANNER THAT IMPEDES, OBSTRUCTS, OR DENIES PEDESTRIANS THE USE OF THE PUBLIC RIGHT-OF-WAY.

(d) UPON REMOVAL OF THE ENCROACHMENT, THE AREA SHALL BE RESTORED TO THE CONDITION IT WAS IN PRIOR TO THE PLACEMENT OF THE ENCROACHMENT IN THE PUBLIC RIGHT-OF-WAY.

#### **SECTION 10-330. ASSIGNMENT.**

ENCROACHMENT PERMITS SHALL BE ISSUED ONLY TO THE PERSON MAKING APPLICATION AND MAY NOT BE ASSIGNED TO ANOTHER PERSON BY THE PERMITTEE. IF ANY PERMITTEE ASSIGNS HIS PERMIT TO ANOTHER, THE PERMIT SHALL BE VOID AND ANY ENCROACHMENTS ALLOWED BY THE PERMIT SHALL BE REMOVED IMMEDIATELY.

#### **SECTION 10-331. REVOCATION.**

(a) AN ENCROACHMENT PERMIT MAY BE REVOKED BY THE TOWN ENGINEER WHEN THE PUBLIC RIGHT-OF-WAY, OR ANY PORTION THEREOF, OCCUPIED AND USED BY THE PERMITTEE IS NEEDED OR REQUIRED BY THE TOWN, AND UPON NOTICE FROM THE TOWN, THE PERMITTEE SHALL PROMPTLY REMOVE ALL PROPERTY BELONGING TO HIM FROM THE RIGHT-OF-WAY IMMEDIATELY AND AT PERMITTEE'S SOLE EXPENSE.

(b) AN ENCROACHMENT PERMIT MAY BE REVOKED IF AT ANY TIME THE TOWN FINDS THAT ENCROACHMENT DOES NOT COMPLY WITH THE TERMS AND CONDITIONS OF THE PERMIT.

Section II. Providing for Repeal of Conflicting Ordinances.

All ordinances and parts of ordinances in conflict with the provisions of this Ordinance or any part of the Code adopted herein by reference, are hereby repealed.

Section III. Providing for Severability.

If any section, subsection, sentence, clause, phrase or portion of this Ordinance or any part of the Code adopted herein by reference, is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions thereof.

Section IV. Providing for Civil Penalties.

Any person found in violation of any provision of this Ordinance shall be Any person found responsible for violating this section shall be subject the civil sanctions and habitual offender provisions set forth in Section 1-5 of the Gilbert Municipal Code.

PASSED AND ADOPTED by the Common Council of the Town of Gilbert, Arizona, this 3<sup>rd</sup> day of October, 2013, by the following vote:

AYES: Cook, Cooper, Daniels, Lewis, Petersen, Ray, Taylor

NAYES: none

ABSENT: none

EXCUSED: none

ABSTAINED: none

APPROVED this 3<sup>RD</sup> day of OCTOBER, 2013.

  
John W. Lewis, Mayor

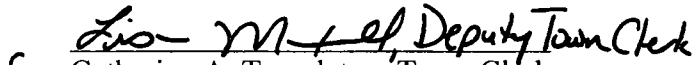
ATTEST:

  
for Catherine A. Templeton, Town Clerk

APPROVED AS TO FORM:

  
L. Michael Hamblin, Town Attorney

I, CATHERINE A. TEMPLETON, TOWN CLERK, DO HEREBY CERTIFY THAT A TRUE AND CORRECT COPY OF THE ORDINANCE NO. 2453 ADOPTED BY THE COMMON COUNCIL OF THE TOWN OF GILBERT ON THE 3<sup>RD</sup> DAY OF OCTOBER, 2013, WAS POSTED IN FOUR PLACES ON THE 10<sup>th</sup> DAY OF October, 2011.

  
for Catherine A. Templeton, Town Clerk